

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**DAN MEAD and JENNIFER MEAD,**

*Plaintiffs,*

v.

**ROCKFORD PUBLIC SCHOOL  
DISTRICT; ROCKFORD PUBLIC  
SCHOOLS' BOARD OF  
EDUCATION,**

*Defendants.*

Case No. 1:23-cv-01313

Honorable Paul L. Maloney

Magistrate Judge Ray Kent

**PLAINTIFFS' RESPONSE TO  
ROCKFORD'S NOTICE OF SUPPLEMENTAL AUTHORITY**

Without telling Dan and Jennifer Mead, the Rockford Public School District treated their daughter as a boy. The Meads claim Rockford violated their rights to freely exercise their religion; to direct their daughter's upbringing, education, and healthcare; and to receive due process. (ECF No. 1, PageID.35-43.) Yet Rockford argues in its Notice of Supplemental Authority that a recent *free-speech* decision justifies dismissing the Meads' complaint. (ECF No. 29, PageID.208-210.) Rockford's argument misunderstands the procedural posture of that case and the legal reasoning of that decision. *See Parents Defending Educ. v. Olentangy Local Sch. Dist. Bd. of Educ.*, 109 F.4th 453 (6th Cir. 2024), *petition for reh'g en banc filed*, No. 23-3630 (6th Cir. Aug. 26, 2024), ECF No. 92.

First, the procedural posture. In ruling that the *Olentangy* plaintiff had not met its free-speech burden, the court emphasized the "drastic" or "extraordinary" nature of a preliminary injunction and the need to "clearly" meet all four factors. *Id.* at 461. And it expressly held that "[t]he standard of review matter[ed]" there. *Id.* The preliminary-injunction standard doesn't apply to the Meads' claims.

A more recent decision in *Olentangy* illustrates how the standard can make a difference. About a week before Rockford’s Notice of Supplemental Authority, the *Olentangy* district court denied that school district’s motion to dismiss for lack of subject-matter jurisdiction. No. 2:23-cv-1595, 2024 WL 3992579, at \*6-7 (S.D. Ohio Aug. 28, 2024). As in *Olentangy*, at the motion-to-dismiss stage, here it is Rockford’s burden to show that the complaint doesn’t state even a single “claim for relief that is plausible on its face.” *Country Mill Farms, LLC v. City of E. Lansing*, 280 F. Supp. 3d 1029, 1038 (W.D. Mich. 2017) (cleaned up). Unlike the preliminary-injunction standard—which considers the “likelihood of success on the merits,” *Olentangy*, 109 F.4th at 461—the motion-to-dismiss standard “is not akin to a probability requirement,” *Country Mill*, 280 F. Supp. 3d at 1038 (cleaned up).

Regarding the legal reasoning, as even Rockford acknowledges (ECF No. 29, PageID.209), the Sixth Circuit considered only a free-speech challenge to the *Olentangy* school district’s policy regarding students’ use of “non-preferred” pronouns to refer to their classmates. 109 F.4th at 459. And Judge Batchelder’s dissenting opinion explains the tension between the majority’s free-speech holding and binding precedent. *See, e.g., id.* at 476 (Batchelder, J., dissenting); *see also* Br. of *Amici Curiae* Am. Civil Liberties Union, et al., *Parents Defending Educ. v. Olentangy Local Sch. Dist. Bd. of Educ.*, No. 23-3630 (6th Cir. filed Oct. 2, 2023), ECF No. 47 at 11 (explaining that *Olentangy*’s policies “cannot withstand First Amendment review”). Thus the plaintiff sought rehearing en banc—also before Rockford filed its Notice of Supplemental Authority.

In any event, the Fourteenth Amendment claim in *Olentangy*—which the Sixth Circuit hasn’t considered yet—challenged only the school district’s “prohibiting off-campus speech, including speech not during a school-sponsored activity.” 2024 WL 3992579, at \*6. Unlike that speech claim, the Meads’ claims here contend that Rockford made “educational and healthcare decisions for their

daughter by treating her as a boy and concealing that fact from them.” (Opp’n to Mot. to Dismiss, ECF No. 21, PageID.143.) The *Olentangy* plaintiff made no similar claims.

Because the Meads have pleaded a plausible claim that Rockford violated their fundamental rights, they ask the Court to deny Rockford’s motion to dismiss.

Dated: September 17, 2024

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on September 17, 2024, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record for all parties.

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